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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,245

04/16/2004

Thomas Bonald

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EXAMINER

HERRERA, DIEGO D

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/825,245	<b>Applicant(s)</b> BONALD, THOMAS	
	<b>Examiner</b> DIEGO HERRERA	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,12-14 and 18 is/are rejected.
- 7) ☒ Claim(s) 4-11 and 15-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/7/2008 has been entered.

### ***Response to Amendment***

Claims 1, 12, 13, and 18 have been amended.

Claim 2 has been cancelled.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: change word to "re-initialization". Appropriate correction is required.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 12-14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaponniere et al. (US 6449490 B1).

**Regarding claim 1.** Chaponniere et al. discloses a method of selecting at least one transmission channel from a plurality of transmission channels, in a time division multiple access protocol (col. 8 lines: 64—col.9 lines: 19, col. 11 lines: 6-9, Chaponniere et al. teaches selecting channel), comprising the steps of:

receiving for each channel a periodic indication of the transmission quality of that channel (col. 9 lines: 36-40, col. 10 lines: 12-19, Chaponniere et al. teaches indication of channel condition with the most recently received instantaneous channel condition indicator);

storing these indications for each channel during a time window (col. 11 lines: 3-5, Chaponniere et al. teaches storing results in a location accessible to one or more functions);

selecting at least one channel from among the plurality of transmission channels that has a best rank (col. 9 lines: 5-14, col. 10 lines: 12-19, Chaponniere et al. teaches parameter indicative of current quality of the channel, selection processor indicates channel selected has to be proportional to the data rate), the rank being a number of stored indications for the respective channel during the time window that are better than a current transmission quality indication (col. 3 lines: 50-55, col. 11 lines: 6-44,

Chaponniere et al. teaches filter output value is generated using low pass filter function

**Consider claim 12.** Chaponniere et al. discloses a communication system using the

method of claim 1, characterized in that it comprises:

a method for receiving, for at least one channel, a periodic indication of transmission quality of that channel (col. 9 lines: 36-40, col. 10 lines: 12-19, Chaponniere et al.

teaches indication of channel condition with the most recently received instantaneous channel condition indicator);

a memory for storing the transmission quality indications of each channel during a time window (col. 11 lines: 3-5, Chaponniere et al. teaches storing results in a location accessible to one or more functions);

a computing circuit to determine, for each channel for which a periodic indication of transmission quality has been received, the rank of that channel (col. 9 lines: 5-14, col. 10 lines: 12-19, Chaponniere et al. teaches parameter indicative of current quality of the channel, selection processor indicates channel selected has to be proportional to the data rate);

a circuit for selecting the transmission channel that has the best rank during the time window (col. 3 lines: 50-55, col. 11 lines: 6-44, Chaponniere et al. teaches filter output value is generated using low pass filter function to define a window in time over which the filter output value will be generated).to define a window in time over which the filter output value will be generated).

**Consider claim 18.** Chaponniere et al. discloses a method of selecting at least one transmission channel from a plurality of transmission channels, in a time division multiple access protocol (col. 8 lines: 64—col.9 lines: 19, col. 11 lines: 6-9, Chaponniere et al. teaches selecting channel), comprising the steps of:

receiving for each channel periodic indications of the transmission quality of that channel (col. 9 lines: 36-40, col. 10 lines: 12-19, Chaponniere et al. teaches indication of channel condition with the most recently received instantaneous channel condition indicator);

storing the indications for each channel during a time window (col. 11 lines: 3-5, Chaponniere et al. teaches storing results in a location accessible to one or more functions);

determining for each channel a counter indicating a number of times a stored indication is better than a current transmission quality indication (col. 4 lines: 4-15, Chaponniere et al. teaches that filter output is updated meaning that it keeps track of preferred indication through filters is recorded); and

selecting from among the plural channels at least one channel that has the highest counter (col. 4 lines: 16-23, Chaponniere et al. teaches that previous users that did not receive access during a that period are compensated in the current one on which it may be fixed or may be proportional to the amount of data was received during the last access).

**Consider claim 3.** Method according to claim 1, characterized in that it consists, during a step (SO), in determining the number of channels N, the size of the time window T and the initial values of the transmission qualities of each channel during the time window (col. 3 lines: 50-55, col. 11 lines: 6-44, Chaponniere et al. teaches filter output value is generated using low pass filter function to define a window in time over which the filter output value will be generated) and in that these parameters may be updated

by interrupting the method at moments chosen by a re-initialization finite state machine, particularly when the number of channels  $N$  changes due to the activity of the users (col. 4 lines: 58-63, col. 5 lines: 3-16, Chaponniere et al. teaches that number of channels may change due to the number of channels that may exist that use different frequencies, furthermore, col. 9 lines: 36-40, col. 10 lines: 12-19, Chaponniere et al. teaches indication of channel condition with the most recently received instantaneous channel condition indicator meaning that at the data multiplexer/channel selector there is a finite state machine monitoring changes).

**Consider claim 13.** Communication system according to Claim 12, characterized in that the circuit for selecting at least one transmission channel comprises a means of selecting channels over which data are to be transmitted and that have the best rank during the time window (col. 3 lines: 50-55, col. 11 lines: 6-44, Chaponniere et al. teaches filter output value is generated using low pass filter function to define a window in time over which the filter output value will be generated).

**Consider claim 14.** Communication system according to Claim 12, characterized in that it comprises at least one circuit (AI) for acquiring the transmission quality signal of the channel (2 i), that is  $C_i(t)$  on the date  $t$  (col. 3 lines: 5-15, 50-57, col. 5 lines: 35-42, Chaponniere et al. teaches choosing or selecting channel for user by acquiring quality of signal through a window of time based of predetermined scales).

***Allowable Subject Matter***

**Claims 4-11, and 15-17** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diego Herrera whose telephone number is (571) 272-0907. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Examiner, Art Unit 2617

/Lester Kincaid/  
Supervisory Patent Examiner, Art Unit 2617